

Others = None. To provide midyear and advance yearend counts of the number of inmates in State and Federal prisons. These data will form the basis for historical trend analysis. Respondents are personnel in the correctional department of the state, the District of Columbia, and the Federal Bureau of Prisons.

- (4) 104 annual respondents at 2.5 hours per response.
- (5) 130 annual burden hours.
- (6) Not applicable under Section 3504(h) of Public Law 96-511.

Public comment on this item is encouraged.

Dated: March 20, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95-7268 Filed 3-23-95; 8:45 am]

BILLING CODE 4410-18-M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

- (1) the title of the form/collection;
- (2) the agency form number, if any, and the applicable component of the Department sponsoring the collection.
- (3) who will be asked or required to respond, as well as a brief abstract;
- (4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
- (5) an estimate of the total public burden (in hours) associated with the collection; and,
- (6) an indication as to whether Section 3504(h) of Public Law 96-511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514-4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written

comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Revision of a Currently Approved Collection

- (1) 1994 National Survey of Prosecutors.
- (2) NSP-1. Bureau of Justice Statistics, States Department of Justice.
- (3) Primary = State, Local, or Tribunal Government. Others = None. This biennial survey collects data on the resources, policies, and practices of local prosecutors from a nationally representative sample of 300 chief litigating prosecutors in State Court Systems.
- (4) 300 annual respondents at 1.0 hours per response.
- (5) 150 annual burden hours.
- (6) Not applicable under Section 3504(h) of Public Law 96-511.

Public comment on this item is encouraged.

Dated: March 20, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95-7269 Filed 3-23-95; 8:45 am]

BILLING CODE 4410-18-M

Drug Enforcement Administration

Henry M. Goshen, M.D.; Denial of Application

On February 14, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Henry M. Goshen, M.D. (Dr. Goshen), of Chicago, Illinois, proposing to deny his application for a DEA Certificate of Registration, as a practitioner, under 21 U.S.C. 823(f). The Order to Show Cause alleged that Dr. Goshen's registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f).

The Order to Show Cause was served on Dr. Goshen by registered mail. More than thirty days have passed since the Order to Show Cause was received by Dr. Goshen and the DEA has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Henry M. Goshen, M.D., is deemed to have waived his opportunity for a hearing. Accordingly, the Deputy Administrator now enters his final order in this matter

without a hearing and based on the investigative file. 21 CFR 1301.57.

The Deputy Administrator finds that the Illinois State Police initiated an undercover investigation of Dr. Goshen's medical practice. On October 24, 1985, an undercover police officer met Dr. Goshen at his office to request diet pills. Notwithstanding that Dr. Goshen determined that this person was not overweight, he dispensed to the undercover officer 14 dosage units of phentermine, a Schedule IV controlled substance, which he indicated was a two week supply.

On October 29, 1985, the undercover officer returned to Dr. Goshen's office and asked for additional diet pills, explaining that she had given some of her phentermine to a girl friend. Dr. Goshen then dispensed more phentermine to the undercover officer. The undercover officer returned to Dr. Goshen's office, on November 5, 1985 and, once again, Dr. Goshen dispensed phentermine tablets. The undercover officer paid Dr. Goshen \$20 for each visit.

Based upon excessive purchase reports for controlled substances and complaints about Dr. Goshen's controlled substance dispensing practices, a Chicago DEA task force initiated an undercover operation in 1989. On October 5, 1989, an undercover police officer visited Dr. Goshen's office, seeking controlled substances. When she encountered Dr. Goshen, she requested phentermine using the street name for this controlled substance. Dr. Goshen, without seeking any medical information from her or performing any medical examinations, dispensed 28 dosage units of phentermine in exchange for \$40.

This undercover officer returned to Dr. Goshen's office on October 17, 1989, again requesting more phentermine and using the drug's street name. On this occasion, she asked for double the amount she received on the prior visit. In response, Dr. Goshen dispensed two envelopes, each containing 28 phentermine capsules. When Dr. Goshen gave her the drugs, he asked her who would receive the pills. The officer gave him three names. She then paid Dr. Goshen \$80 for the phentermine.

On November 3, 1989, Dr. Goshen was arrested and charged with one count of illegal distribution of controlled substances in violation of 21 U.S.C. 841(a)(1). At the time of his arrest, a search warrant was executed at Dr. Goshen's office and during the search approximately 42,000 dosage units of controlled substances were seized. Further investigation revealed that Dr. Goshen had no dispensing

records for any controlled substances, as required by 21 U.S.C. 827.

DEA investigators discovered that Dr. Goshen ordered 6,250 dosage units of controlled substances on November 6, 1989, shortly after he was released following his arrest. The investigation revealed that Dr. Goshen explained to the distributor that the drug order was necessary to replenish his stock because his office had recently been burglarized.

On November 15, 1989, DEA issued an Order to Show Cause/Immediate Suspension of Dr. Goshen's previous DEA Certificate of Registration. The Order to Show Cause/Immediate Suspension was based upon the undercover buys of phentermine; the search of Dr. Goshen's office and discovery of 42,000 dosage units of controlled substances along with no dispensing records; and the order of controlled substances that Dr. Goshen made, shortly after his arrest, under the pretext that his office had been burglarized.

On February 15, 1990, in the United States District Court, Northern District of Illinois, Dr. Goshen pled guilty to one felony count of knowingly and intentionally omitting material information from reports, records and other documents required to be made, kept or filed, in violation of 21 U.S.C. 843(a)(4)(A). Specifically, Dr. Goshen failed to keep records of receipt or disposition of approximately 19,950 dosage units of phentermine. On June 5, 1990, Dr. Goshen was sentenced to five years probation, 200 hours of community service and a \$10,000 fine. As a result of the conviction, on February 25, 1990, Dr. Goshen surrendered his previous DEA Certificate of Registration.

On July 11, 1990, the Illinois Department of Professional Regulation (Department of Regulation) filed a complaint, seeking to revoke Dr. Goshen's medical license based upon his felony conviction. Dr. Goshen entered into a stipulation and recommendation for settlement with the Illinois Medical Disciplinary Board and Controlled Substance Hearing Officer. Dr. Goshen agreed that: His medical license be suspended for three months and thereafter be placed on probation for five years; his state controlled substance license be suspended for five years; he complete 50 hours of continuing medical education courses on the use of controlled substances; he complete 50 additional hours of continuing medical education for each year of his five year probation; and he pay a \$5,000 fine. The stipulation and recommendation was adopted by the

Department of Regulation on June 3, 1991.

On March 3, 1992, the Bureau of Medical Quality Assurance of the Illinois Department of Public Aid (Department of Public Aid) served Dr. Goshen with a complaint seeking to terminate his right to participate in the Medical Assistance Program. The complaint was predicated on his felony conviction and the action taken against Dr. Goshen's medical license. During an administrative hearing regarding this complaint, Dr. Goshen testified that phentermine is non-addicting and had a street value far less than other controlled substances. During cross-examination, he admitted, however, that other medical authorities considered phentermine to be a drug that posed a substantial risk of dependency with repeated use. Dr. Goshen also admitted that he had always known that records for phentermine were required to be kept.

Following the hearing, the hearing officer recommended that Dr. Goshen's participation in the Medical Assistance Program be revoked. The Director of the Department of Public Aid adopted the recommendation and terminated Dr. Goshen's right to participate in the Medical Assistance Program, effective November 10, 1992.

Dr. Goshen then sought to have the Department of Regulation reinstate his controlled substance privileges before the five year term expired. Based upon a stipulated agreement, effective January 11, 1993, the Department of Regulation agreed to restore Dr. Goshen's Illinois controlled substance privileges, on a four year probationary status. Pursuant to the order, Dr. Goshen was limited to prescribing, but not dispensing, controlled substances.

In evaluating whether Respondent's registration by the Drug Enforcement Administration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f), the Deputy Administrator considers the factors enumerated in 21 U.S.C. 823(f). They are as follows:

- (1) The recommendation of the appropriate State licensing board or professional disciplinary authority.
- (2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.
- (3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.
- (4) Compliance with applicable State, Federal, or local laws relating to controlled substances.
- (5) Such other conduct which may threaten the public health and safety.

In determining whether an applicant's registration is inconsistent with the public interest, the Deputy Administrator is not required to make findings with respect to each of the factors listed above. Instead, the Deputy Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances of each case. See *David E. Trawick, D.D.S.*, Docket No. 88-69, 53 FR 5326 (1988).

Factor one is applicable based upon the Department of Regulation's action against Dr. Goshen's medical license which initially resulted, *inter alia*, in a five year suspension of his state controlled substances privileges in June 1991. Although the Department of Regulation lifted the five year suspension in 1993, Dr. Goshen's controlled substance privileges were still placed on probation for four years and limited to the prescribing of controlled substances only. Factor one is also applicable based upon the Illinois Department of Public Aid's action which terminated Dr. Goshen's right to participate in the Medical Assistance Program in November 1992.

Factor two is applicable based upon Dr. Goshen's dispensing of phentermine to two undercover agents on five separate occasions in 1985 and 1989. The transcripts reveal that there was not even a pretense of a medical justification for Dr. Goshen's actions. During the 1989 visit, the undercover officer requested the drugs by using street names and telling Dr. Goshen that the drugs were for herself as well as others.

Factor three is applicable based upon Dr. Goshen's conviction for knowingly and intentionally failing to keep required records for the massive amount of phentermine that he ordered.

Factor four is relevant in light of the undercover buys of phentermine as noted under factor two. The blatant sale of the phentermine in no way complies with Federal or State laws.

Factor five is relevant based upon the conduct of Dr. Goshen shortly after his arrest. Notwithstanding his arrest and the fact that large quantities of phentermine were removed from Dr. Goshen's office, Dr. Goshen almost immediately ordered large quantities of phentermine, explaining to the distributor that he needed the drugs because his office had been burglarized.

No evidence of explanation or mitigating circumstances has been offered by Dr. Goshen. Therefore, the Deputy Administrator concludes that Dr. Goshen's application for a DEA Certificate of Registration must be denied.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application, executed by Henry M. Goshen, M.D., on February 9, 1993, for a DEA Certificate of Registration as a practitioner, be, and it hereby is, denied. This order is effective April 24, 1995.

Dated: March 20, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95-7316 Filed 3-23-95; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 93-60]

James C. Graham, M.D.; Denial of Application

On June 7, 1993, the Deputy Assistant Administrator, Office of Division Control, Drug Enforcement Administration (DEA), directed an Order to Show Cause to James C. Graham, M.D. (Respondent), proposing to deny his pending application for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest.

Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause. The matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Fort Wayne, Indiana, on January 26, 1994.

On October 11, 1994, Judge Bittner issued her opinion and recommended ruling, findings of fact, conclusions of law, and decision in which she recommended that the Respondent's application for registration be denied. Neither party filed exceptions to this opinion, and on November 14, 1994, the administrative law judge transmitted the record of the proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, enters his final order in this matter, based on findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that Respondent received a medical degree from Indiana University, and practiced medicine in Fort Wayne continuously from 1958 to 1983. Respondent stated that he sometimes saw as many as one hundred patients a day, often worked up to 18 hours a day, performed multiple surgeries and

delivered two to three hundred babies each year. Respondent also testified that many of his patients were on welfare or Medicaid, and that he treated about thirty percent of his patients without compensation. Respondent stated that because of a busy schedule he was unable to keep appropriate documentation on all of his patients.

Judge Bittner found that in 1982, the Allen County Police Department received information that Respondent was writing prescriptions in exchange for merchandise. Subsequently, a cooperating individual and an undercover Indiana State police officer arranged meetings with Respondent in a local restaurant.

Judge Bittner found that in October through December 1982, Respondent provided the cooperating individual several prescriptions for a Schedule IV controlled substance in exchange for liquor and meat, and on one occasion issuing the prescription to the confidential informant in another's name. Subsequently, in November and December 1982, Respondent gave the undercover officer several prescriptions for Schedule III and IV controlled substances in exchange for meat and liquor. In January and February 1983, both undercover operatives were able to continue to acquire prescriptions for controlled substances, including a Schedule II narcotic controlled substance, from Respondent in exchange for merchandise. At the hearing, the undercover officer testified that Respondent never performed any physical examination during any visit.

The administrative law judge found that on November 21, 1983, Respondent was convicted in the United States District Court for the Northern District of Indiana of fourteen felony counts of dispensing controlled substances not in the course of professional practice and not for a medical purpose. Respondent was sentenced to three years imprisonment suspended to thirty days in jail and three years probation. As a result of this conviction, the Medical Licensing Board of Indiana summarily suspended Respondent's medical license. After a hearing in April 1984, that Board reinstated Respondent's medical license upon probationary terms.

Judge Bittner found that after Respondent had submitted his current pending application for DEA registration in 1991, he told DEA investigators that he had been set up and had never written any prescriptions for controlled substances that were illegitimate.

Respondent testified that since his State medical license were restored he

has never been accused of violating any rules or regulations. He stated that he has been limited to a part-time medical practice because of illness.

During his testimony, Respondent admitted meeting both undercover operatives. However, he denied that he ever gave either one a prescription in exchange for meat or liquor. Respondent testified that any prescription he may have given these individuals was for a legitimate medical purpose.

Respondent submitted documentary evidence on his behalf and several character witnesses also testified. The administrative law judge found that one psychiatrist reported that Respondent's judgment had been impaired at the time of these incidents, and another had found that an automobile accident had resulted in a brain injury to Respondent that had caused deficits in judgment. Both physicians reported this condition as now resolved. Other health professionals offered testimony that Respondent was a competent, compassionate, well qualified physician who posed no threat to the community.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration if he determines that the registration would be inconsistent with the public interest.

Section 823(f) sets forth the following factors to be considered in determining the public interest:

- (1) The recommendation of the appropriate State licensing board or professional disciplinary authority.
- (2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.
- (3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.
- (4) Compliance with applicable State, Federal, or local laws relating to controlled substances.
- (5) Such other conduct which may threaten the public health and safety.

It is well established that these factors are to be considered in the disjunctive, i.e., the Deputy Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. *Henry J. Schwarz, Jr., M.D.*, 54 FR 16422 (1989).

Of the stated factors, the administrative law judge found that all five factors were relevant. Judge Bittner determined that the record established that Respondent blatantly and unabashedly abused his privilege as a registrant by issuing controlled substance prescriptions in return for his own gain in the form of goods and